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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-102-10379

Office: NEW YORK

Date:

FEB 11 2009

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant's response to the Notice of Intent to Deny (NOID) was insufficient, and that therefore his application was being denied for the reasons stated in the NOID. In the NOID dated June 20, 2006, the director noted that the affidavits submitted by the applicant were not credible or amenable to verification. The director also noted that although the applicant claimed to have traveled outside the United States only once in June of 1987 since arriving in November 1981, he submitted a photocopy of his previously issued Chilean passport issued to him on June 1, 1983 in Chile. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the applicant has submitted documentary evidence sufficient to establish his continuous residence in the United States during the requisite period. Counsel further asserts that the evidence should be reviewed for humanitarian reasons and the adverse decision reconsidered. The applicant does not submit any new evidence on appeal.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a current Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on January 10, 2006. The applicant submitted a previous Form I-687 on April 30, 1993. The applicant stated on his current Form I-687 at part #30, where he was asked to list his residences in the United States, that he resided at [REDACTED] basement, in Brooklyn, New York from November 1981 to January 2006. On his previous Form I-687 at part #33, the applicant stated that he resided in the United States at [REDACTED] in Brooklyn, New York from November 1981 to September 1990. Likewise, the applicant stated on his current Form I-687 at part #33, when asked to list his employment in the United States, that he was self-employed from November 1981 to January

2006. He stated on his previous Form I-687 at part #36 that he was employed by [REDACTED] Refrigeration Company from December 1981 to May 1984; and by [REDACTED] Car Service from May 1984 to April 1993.

The applicant submitted as evidence a photocopy of a certificate of divorce from the State of New York bearing his name as plaintiff and dated July 16, 1985. Counsel asserts in the response to the NOID that because the applicant's divorce was completed in July of 1985, he had to be in the United States a year before, based upon the New York State divorce law. Contrary to counsel's claim and the divorce certificate submitted, on his current and previous Forms I-687 at part #11 and Form G-325, Biographic Information, dated May 6, 2002, in response to the marital status question, the applicant answered "Never Married." On the applicant's Form I-485, Application to Register Permanent Residence or Adjustment Status, dated May 9, 2002, and Form I-765, Application for Employment Authorization, dated May 9, 2002, the applicant stated that his marital status was "Single." On both of the applicant's Chilean passports he indicated that his marital status was "Soltero" which means single/unmarried in English. There has been no explanation for these inconsistencies and contradictions.

The applicant also submitted a translated affidavit from [REDACTED] in which the manager stated that [REDACTED] purchased two separate one way tickets under the name [REDACTED] dated June and July of 1987. Here, there has been no evidence presented to demonstrate that the applicant and [REDACTED] is the same person, and therefore, this evidence cannot be considered relevant to the applicant's presence in the United States during the requisite period.

The applicant submitted a copy of a certificate of perfect attendance to the Kingsborough Community College ESL program bearing his name and dated the summer of 1986. Here, the certificate does not specify the dates of the applicant's attendance.

The applicant submitted a letter from [REDACTED] who stated that the applicant has been a patient at his medical office from September 16, 1985 through October 16, 1991, and that he is a person of good physical and mental health. The declarant fails to submit independent documentary evidence such as appointment records or payment receipts to substantiate his claim. He fails to specify the frequency with which he saw or communicated with the applicant. Nor does he specify the applicant's place of residence during the requisite period.

The applicant submitted the following letters of employment:

- An affidavit from the owner of [REDACTED] Refrigeration Company in which he stated that the company has employed the applicant as a general helper from December 10, 1981 to May 3, 1984, with a weekly salary of \$150.00.

- A letter dated October 15, 1992, from the president of the [REDACTED] Car Service Corporation in which he stated that the company has employed the applicant since May 1984 as a taxi driver, earning \$525.00 gross per week.
- An affidavit dated July 20, 1993, from [REDACTED] in which she stated that she has known the applicant for about 6 years as a driver for [REDACTED] Car Service. Here, the affiant fails to indicate the origins of her statement or her affiliation with the [REDACTED] Car Service.

The employment letters are inconsistent with the applicant's Form I-687 where he indicated at part 33 that he was self-employed from November 1981 to January 2006. In addition, the attestations do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify the applicant's place of residence during the period of employment or the number of hours worked. 8 C.F.R. § 245a.2(d)(3)(i). The declarant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or pay statements that pertain to the requisite period to corroborate the assertions made by the declarants. Because the attestations do not conform to regulatory standards, they can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] in which he stated that the applicant lived with him at [REDACTED] in Brooklyn, New York from November 9, 1981 to September 22, 1990. The applicant also submitted an affidavit from [REDACTED] in which he stated that he resides at [REDACTED] in Princeton, New Jersey, and that the applicant lived with him since 1990. Here, the statements are inconsistent with the applicant's current Form I-687 where he indicated that he resided at [REDACTED], basement apartment, in Brooklyn, New York, from November 1981 to January 2006. The statements are also inconsistent with the applicant's passport dated June 1, 1983 where he stated that he resided at [REDACTED], in Brooklyn, New York at that time.

The applicant submitted the following attestations:

- A fill-in-the-blank affidavit from [REDACTED] in which she stated that she met the applicant at a Christmas party in December of 1981 and that to her personal knowledge, the applicant resided in Brooklyn, New York from November 1981 to September 1990.
- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he met the applicant at the refrigeration repair store where he used to work in 1981 and that the applicant came to work at the car service company where he worked.

Here, the affiants' statements are inconsistent with what the applicant stated on his current Form I-687 and passport dated June of 1983, as noted above. The affiants fail to specify the

applicant's place of residence during the requisite period. They fail to provide any detail relating to the circumstances of the applicant's claimed entry into or residence in the United States since before January 1, 1982. They also fail to specify the frequency with which they saw and communicated with the applicant sufficient to demonstrate their awareness of his whereabouts and the circumstances of his residency during the requisite period.

In denying the application, the director noted that the evidence submitted lacked credibility sufficient to establish the applicant's continuous unlawful residence in the United States throughout the requisite period.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. The applicant does not submit any new evidence.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. The attestations submitted are inconsistent with and contradictory to the applicant's statements and are lacking in detail sufficient to support the applicant's claimed eligibility. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the multiple inconsistencies and contradictions.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon evidence that is inconsistent and contradictory to his statements, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.